

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3863 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NIRANJAN SHANTILAL BHATT

Versus

STATE OF GUJARAT

Appearance:

MR BN PATEL for Petitioner

M/S MG DOSHIT & CO for Respondent No. 1, 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 09/02/99

ORAL JUDGEMENT

This petition has been filed for a declaration and to strike down the provisions of rule 4(1) of Gujasrat Co-operative Department (Conditions of Service relating to Gujarat Co-opeerative Serevices, Class-I and Class-II Officers' Examination) Rules, 1975 and to direct the respondents to release the increment of the petitioner from 1.11.77 and to pay arrears and not to

withhold the increments of the petitioner on the ground that the petitioner has not passed the examination prescribed under Rules of 1975 and he also claims the exemption from passing the examination prescribed under Rules of 1975 and to consider the petitioner's promotion irrespective of his passing the examination prescribed under the Rules of 1975. The petitioner passed the Government diploma in Co-operation and Accountancy Examination before the petitioner was promoted to the cadre of class II, Gujarat Co-operative Services, but the petitioner was required to pass the departmental examination prescribed under the Rules of 1966 known as Accounts Test within three years after completion of one year's service as class II officer. The petitioner was working in class III service of the Co-operative Department and he was promoted to class II from 5.11.1973 and he became eligible to appear in the Accounts test examination under Rules of 1966 only on 6.11.74. The examination was held in the year 1975, but the petitioner did not appear in the examination to be held in the next year. In the next year the Rules of 1975 came into force and the petitioner had lost chances to appear in the examination held under old Rules. Under the New Rules, the petitioner was required to pass two additional papers, but the respondents without notifying in advance that the examination of 1975 under Old Rules was the last examination, Rules of 1975 were made applicable. The petitioner appeared in the examination prescribed under Rules of 1975 held in January, 1976 and passed four papers except paper no.1 and the petitioner was declared fail because he could not pass all the five papers. The petitioner was regularly promoted to class II post in the year 1973. The petitioner was required to pass the examination under the Rules was not a condition precedent, hence the petitioner was allowed to cross 1st efficiency bar by an order dated 25th May, 1977. The petitioner was appointed on 6.11.73 and hence the petitioner was required to pass the examination before 6.11.77, but in the meanwhile, Rules were changed and the petitioner was not give an appropriate opportunity to appear in the examination under Old Rules of 1966. The petitioner made several representations for granting him exemption from passing the said examination on the ground that the petitioner was wrongly burdened with two additional papers which were imposed by Rules of 1975, but the respondents refused to grant exemption to the petitioner and also refused to declare the petitioner to have passed the necessary examination. Another person Madhusudan J Bhatt who was junior to the petitioner was promoted on 1.6.81. As such, the petitioner is entitled to get exemption.

2. By an amendment of the Rules pursuant to the notification dated 29.11.78, the petitioner was entitled for exemption under Rule 2 which is as under:

In the Gujarat Co-operative Department (conditions of service relating to Gujarat Co-operative Service class I and class II Officers' examination) Rules, 1975 in rule-1 in sub-rule (3) after the proviso (iii) the following further proviso shall be added, namely:

(IV) Provided also the person above the age of 45 years at the time of his appointment by selection or by promotion in Gujarat Co-operative Service, class I and Class II or at the time of commencement of these rules shall not be required to pass the examination as prescribed in these rules."

3. I have heard the learned counsel for the petitioner and also learned AGP Mr. B.Y.Mankad for the respondents. Learned counsel for the petitioner Mr. B N Patel submitted that the petitioner has been exempted subsequently from passing the qualifying test and he was promoted to the higher post. He also submitted that the petitioner is entitled for promotion immediately from the date on which his juniors were promoted. I have considered this contention of the learned counsel for the petitioner. It is not possible to hold at this stage that juniors to the petitioner were promoted illegally and the petitioner's promotion was not properly considered. I therefore, do not find any substance in the contention raised by the learned advocate for the petitioner.

4. Under the old Rules of 1966, the petitioner was required to pass the examination test within three years from the date of eligibility to appear in the accounts test examination and he was eligible to appear in the examination to be held on or after 6.11.74., but the petitioner admittedly did not appear in the examination and that he intended to appear in the next year i.e. in the year 1975. But in the year 1975, new Rules came into force and it appears that the petitioner had not applied to appear in the examination under Old Rules of 1966 in the year 1975 and he appeared in the examination held in January, 1976; but he could not pass paper no.1 and he was declared fail. Rule 4(1) of the Rules of 1975 requires a person holding the post

specified in Appendix "C" and promoted to any of the posts specified in Appendix "A" prior to the appointed date shall be required to pass the examination within a period of three years from the date of his completing one year's service on any of the gazetted posts as specified in appendix "A".

So far as the validity of the Rules is concerned, the learned counsel for the petitioner could not convince this Court that the Rules are violative or null and void. Thus, the Rules require passing of the examination and without passing the required examination test, promotion is not a legal one. Regarding not allowing the petitioner to cross efficiency bar, it is mentioned in the grounds that some adverse entries were recorded in the character roll of the petitioner and adverse remarks were also made for the year 1978-79 which were expunged in the appeal preferred by the petitioner. The adverse remarks were also communicated for the year 1980-81 and the petitioner preferred an appeal before Commissioner of Co-operation and Registrar of Co-operative Societies on 16.12.81. However, subsequently that appeal was dismissed by an order dated 5.10.82. The petitioner is not entitled for promotion as he has not passed the requisite examination and certain adverse remarks have also been passed against him. As such, the petitioner is not entitled for the release of increments from 1.11.77. I have also carefully considered the entire record and I find that the petitioner is not entitled to get any relief and this petition deserves to be dismissed.

4. Accordingly, this petition is dismissed.
Rule is discharged with no order as to costs.

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